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UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,232	09/26/2001	Timothy E. Grib	HO-P02393US0	1841

22206 7590 11/16/2007	EXAMINER
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ART UNIT	PAPER NUMBER
2143	

MAIL DATE	DELIVERY MODE
11/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>10 August 2007</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-29</u> is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1-29</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

1.   This action is responding to application papers filed on **8/10/2007**. Claims

1 - 29 are pending. Independent claims are **1, 16, 21**. Based on the remarks 35

U.S.C. 112, first paragraph is withdrawn.

Information Disclosure Statement

2.   The information disclosure statement (IDS) submitted on 5/23/07 was filed, and

the IDS is same as the mailing date of the original IDS on 12/23/2005, which was

signed by examiner then mailed on 4/6/2006 with Non-Final action. The submission is

in compliance with the provisions of 37 CFR 1.97. However, the information disclosure

statement (IDS) submitted on 5/23/07 is being re-considered by the examiner.

Response to Arguments

3.   Applicant's arguments, filed 8/10/2007, with respect to the rejection(s) of claim(s) 1-

29 under **Mayton et al.** (US Patent No. 6,763,380) have been fully considered and are

persuasive. Therefore, the rejection has been withdrawn. However, upon further

consideration, a new ground(s) of rejection is made in view of **Beaven et al.** (US Patent

No. **5,627,766**)..

3.1   Applicant argues that the referenced prior art does not disclose, "The cited

reference fails to show processor initiated simultaneous execution of the first and the

second non-sequential tests of a first type over two paths as recited by independent

claims 1, 15, 16, and 21". (see Remarks Page 8)

Beaven discloses program (processor) initiated simultaneous execution of performance tests over multiple paths between network connected nodes. (see Beaven col. 4, lines 8-13: concurrent, simultaneous execution of performance tests of alternate paths between nodes (first, second devices))

3.2   Applicant argues that the referenced prior art does not disclose, "The cited references, taken alone or in combination, fail to teach or suggest features recited by claim 12". (see Remarks Page 11)

Zhuo is not disclosed to provide any claim limitations within claim 1.   The Office Action states the claim limitations Zhuo is used to reject.

3.3.   The examiner has considered the applicant's remarks concerning a methods and an apparatus disclosed for performance measurement of multiple paths between a first device and a second device.   A first performance test is conducted over a first path between the first and second devices, and a second performance test is also conducted over a second path between the first and second devices.   These first and the second performance tests are performed simultaneously or within close time proximity so that comparative data can be derived.   These tests may be conducted in response to client requests or may be scheduled.   Applicant's arguments have been fully analyzed and considered but they are not persuasive.

After an additional analysis of the applicant's invention, remarks, and a search of the available prior art, it was determined that the current set of prior art consisting of

Beaven (5,627,766), Mayton (6,763,380), Silva (6,360,268), and Zhuo (20030036865)

disclose the applicant's invention including disclosures in Remarks dated September 4,

2007.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another
> filed in the United States before the invention by the applicant for patent or (2) a patent granted on an
> application for patent by another filed in the United States before the invention by the applicant for patent,
> except that an international application filed under the treaty defined in section 351(a) shall have the effects
> for purposes of this subsection of an application filed in the United States only if the international
> application designated the United States and was published under Article 21(2) of such treaty in the
> English language.

5.   **Claims 1 - 4, 15 - 17, 21** are rejected under 35 U.S.C. 102(e) as being

anticipated by **Beaven et al.** (US Patent No. **5,627,766**).

Regarding Claim 1, Beaven discloses a method performed by one or more

components in a network comprising a plurality of paths between a first device and a

second device, the method comprising:

   a) conducting a first performance test of a first type (see Beaven col. 2, lines 44-48:

      communication types (i.e. a first type)) over a first path of multiple paths between

      first and second devices; col. 3, lines 19-24; col. 3, lines 58-67: measurement

      test of network performance (first test) for a path selected from multiple paths

      between two network connected devices (first, second devices))

   b) conducting a second performance test of the first type (see Beaven col. 4, lines

8-13: communication type (a first type) over an alternative path (second path) of

the multiple paths between first and second devices); and

c) wherein a processor initiates the simultaneous execution of the first and the

second non-sequential performance tests are performed simultaneously. (see

Beaven col. 4, lines 8-13: concurrent, simultaneous execution of performance

tests of alternate paths between nodes (first, second devices))

Regarding Claim 2, Beaven discloses the method of claim 1, wherein the first

performance test produces a first set of results;

a) wherein the second performance test produces a second set of results; (see

Beaven col. 3, lines 19-24; col. 4, lines 3-5: results are generated for

performance tests (second set)) and

b) further comprising presenting a service level performance comparison based on

the first and second sets of results. (see Beaven col. 3, lines 19-24; col. 3, lines

58-67: performance factors (service level) determined from test results, such as

poor performance from latency or communication outages)

Regarding Claim 3, Beaven discloses the method of claim 2, wherein the first

performance test includes a plurality of first individual performance tests performed over

an extended time duration; and the second performance test includes a plurality of

second individual performance tests performed over the extended time duration. (see

Beaven col. 4, lines 8-13: tests performed over multiple paths of network topology; col.

8, line 66 - col. 9, line 5: repeated tests over multiple paths between two network

connected devices over an extended time period (time based tests))

Regarding Claim 4, Beaven discloses the method of claim 3, wherein each of the

pluralities of first and second individual performance tests are performed at roughly

periodic intervals over the extended time duration. (see Beaven col. 8, line 66 - col. 9,

line 5: time based tests (periodic intervals) performed)

Regarding Claim 15, Mayton discloses a computer readable medium containing

computer executable instructions for performing a method by steps comprising: (see

Mayton col. 5, lines 6-18: performance test system can be implemented as computer

program product)

    a) conducting a first performance test of a first type over a first path of a plurality of
       paths between a first and second devices; (see Beaven col. 2, lines 44-48:
       communication types (i.e. a first type)) over a first path of multiple paths between
       first and second devices; col. 3, lines 19-24; col. 3, lines 58-67: test for
       measurement of network performance (a first test) for a route (path) selected
       from multiple routes (paths) between two network devices (first and second
       device); col. 4, lines 62-67: software, program product)

    b) conducting a second performance test of the first type over a second path of the

       plurality of paths between the first and second devices; (see Beaven col. 4, lines

       8-13: communication types (a first type) over an alternative path (second path) of

       the multiple paths between first and second devices); and

    c) wherein a processor initiates the simultaneous execution of the first and the

       second non-sequential performance tests are performed simultaneously. (see

Beaven col. 4, lines 8-13: concurrent, simultaneous execution of performance

tests of alternate paths between nodes (first, second devices)) .

Regarding Claims 16, Mayton discloses a network comprising:

a) a plurality of paths between a first device and a second device; (see Beaven col.

4, lines 8-13: multiple (alternate) paths between two network connected nodes)

b) means for conducting a first performance test of a first type (see Beaven col. 2,

lines 44-48: communication types (i.e. a first type)) over a first path of multiple

paths between first and second devices; col. 3, lines 19-24; col. 3, lines 58-67:

test for measurement of network performance (a first test) for a route (path)

selected from multiple routes (paths) between two network devices (first and

second device))

c) means for conducting a second performance test of the first type (see Beaven

col. 4, lines 8-13: communication types (a first type) over an alternative path

(second path) of the multiple paths between first and second devices)

d) wherein a processor initiates the simultaneous execution of the first and the

second non-sequential performance tests are performed simultaneously. (see

Beaven col. 4, lines 8-13: concurrent, simultaneous execution of performance

tests of alternate paths between nodes (first, second devices))

Regarding Claim 17, Beaven discloses the network of claim 16,.

a) wherein said means for conducting the first performance test includes means for

generating a first set of results; wherein said means for conducting the second

performance test includes means for generating a second set of results; (see

Beaven col. 4, lines 3-5: results are generated for performance tests (first,

second set)) and

b) further comprising means for presenting a service level performance comparison

based on the first and second sets of results. (see Beaven col. 3, lines 19-24;

col. 3, lines 58-67: performance factors (service level) determined from test

results, such as poor performance from latency or communication outages)

Claim Rejection - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7.   Claims **5 - 9, 13, 17 - 20, 22 - 29** are rejected under 35 U.S.C. 103(a) as being

unpatentable over **Beaven** in view of **Mayton** (US Patent No. **6,763,380**).

Regarding Claims 5, 18, Beaven discloses the method of claims 1, 16. Beaven does

not specifically disclose whereby a first transport network, and a second transport

network. However, Mayton discloses wherein the first path transverses a first access

network, a first transport network, and a second access network; and the second path

transverses the first access network, a second transport network, and the second

access network. (see Mayton col. 8, lines 57-63: multiple transport protocols (TCP and

RTP) utilized in generating performance test data)

It would have been obvious to one of ordinary skill in the art to modify Beaven as

taught by Mayton to enable the capability to utilize transport layer networks.   One of

ordinary skill in the art would have been motivated to employ the teachings of Mayton in

order to enable the capability to analyze the actual performance of the network and

receive the benefit of network performance tools that reduce the level of expertise about

network topology required of IT personnel.   (see Mayton col. 3, lines 8-13: " ... *It is*

increasingly important to analyze the actual performance of the network to be tested

without the constraints and limitations of these existing tools. It would also be beneficial

to provide network performance tools that reduce the level of expertise about network

topology required of IT personnel.   ... ")

Regarding Claims 6, 19, 24, 27, Beaven discloses the method of claims 1, 16, 23.

Beaven does not specifically disclose whereby receiving a scheduling request.

However, Mayton discloses wherein further comprising receiving a scheduling request

representing the first and second performance tests. (see Mayton col. 3, lines 16-22:

perform tests based on a schedule)

It would have been obvious to one of ordinary skill in the art to modify Beaven as

taught by Mayton to enable the capability for receiving a scheduling request.   One of

ordinary skill in the art would have been motivated to employ the teachings of Mayton in

order to enable the capability to analyze the actual performance of the network and

receive the benefit of network performance tools that reduce the level of expertise about

network topology required of IT personnel.   (see Mayton col. 3, lines 8-13)

Regarding Claim 7, Beaven discloses the method of claim 6. Beaven does not

specifically disclose whereby the scheduling request is received by a scheduling

system. However, Mayton discloses wherein the scheduling request is received by a

scheduling system; and the scheduling system communicates a first indication of the

request to the first device. (see Mayton col. 11, lines 34-40: test scheduler

communicates schedule information to endpoint nodes (first and second network

devices))

It would have been obvious to one of ordinary skill in the art to modify Beaven as

taught by Mayton to enable the capability for the scheduling request to be received by a

scheduling system.   One of ordinary skill in the art would have been motivated to

employ the teachings of Mayton in order to enable the capability to analyze the actual

performance of the network and receive the benefit of network performance tools that

reduce the level of expertise about network topology required of IT personnel.   (see

Mayton col. 3, lines 8-13)

Regarding Claim 8, Beaven discloses the method of claim 7. Beaven does not

specifically disclose whereby the scheduling system further communicated a second

indication of the request to the second device. However, Mayton discloses wherein the

scheduling system further communicated a second indication of the request to the

second device. (see Mayton col. 11, lines 34-40: test scheduler communicates schedule

information to endpoint nodes (first and second network devices))

It would have been obvious to one of ordinary skill in the art to modify Beaven as

taught by Mayton to enable the capability for the scheduling request to be received by a

scheduling system.   One of ordinary skill in the art would have been motivated to

employ the teachings of Mayton in order to enable the capability to analyze the actual

performance of the network and receive the benefit of network performance tools that

reduce the level of expertise about network topology required of IT personnel.   (see

Mayton col. 3, lines 8-13)

Regarding Claims 9, 20, Beaven discloses the method of claims 6, 19. Beaven does

not specifically disclose whereby scheduling the first and second performance tests

based on the scheduling request and a random time component. However, Mayton

disclose wherein further comprising scheduling the first and second performance tests

based on the scheduling request and a random time component. (see Mayton col. 14,

lines 49-52; col. 8, lines 52-57: tests are performed at random based on exception

events)

It would have been obvious to one of ordinary skill in the art to modify Beaven as

taught by Mayton to enable the capability for the scheduling request is received by a

scheduling system. One of ordinary skill in the art would have been motivated to

employ the teachings of Mayton in order to enable the capability to analyze the actual

performance of the network and receive the benefit of network performance tools that

reduce the level of expertise about network topology required of IT personnel. (see

Mayton col. 3, lines 8-13)

Regarding Claim 13, Beaven discloses the method of claim 6. Beaven does not

specifically disclose whereby whether a number of scheduled tests exceeds a first

threshold number for the first device or exceeds a second threshold number for the

second device. However, Mayton discloses wherein further comprising determining

whether a number of scheduled tests exceeds a first threshold number for the first

device or exceeds a second threshold number for the second device. (see Mayton col.

6, line 66 - col. 7, line 3: threshold values are utilized)

It would have been obvious to one of ordinary skill in the art to modify Beaven as

taught by Mayton to enable the capability for the scheduling request is received by a

scheduling system. One of ordinary skill in the art would have been motivated to

employ the teachings of Mayton in order to enable the capability to analyze the actual

performance of the network and receive the benefit of network performance tools that

reduce the level of expertise about network topology required of IT personnel. (see

Mayton col. 3, lines 8-13)

Regarding Claim 21, Beaven discloses a network comprising:

wherein a processor initiates the simultaneous execution of a performance test is

between the first device and the second device over each of the first and second

transport networks simultaneously. (see Beaven col. 4, lines 8-13: concurrent,

simultaneous execution of performance tests of alternate paths between nodes (first,

second devices))   Beaven does not specifically discloses whereby transport

networks.

However, Mayton discloses:

a) a first device coupled to a first access network; the first access network coupled

   to a first and a second transport networks; (see Mayton col. 9, lines 38-41; col. 8,

   lines 62-63: one or more transport protocols (i.e. TCP, UDP, RTP) utilized for

   network communications)

b) a second access network coupled to the first and the second transport networks;

   (see Mayton col. 9, lines 38-41; col. 8, lines 62-63: one or more transport

   protocols (i.e. TCP, UDP, RTP) utilized for network communications) and

c) a second device coupled to the second access network;

   It would have been obvious to one of ordinary skill in the art to modify Beaven as

taught by Mayton to enable the capability for communications utilizing transport

networks.   One of ordinary skill in the art would have been motivated to employ the

teachings of Mayton in order to enable the capability to analyze the actual performance

of the network and receive the benefit of network performance tools that reduce the

level of expertise about network topology required of IT personnel.   (see Mayton col. 3,

lines 8-13)

Regarding Claim 22, Beaven discloses the network of claim 21.   Beaven does not

specifically disclose whereby utilizing transport networks.   However, Mayton discloses

wherein the first device is coupled to a first router, wherein the first router selectively

routes performance testing packets received from the first device over a first path to the

first transport network and a second path to the second transport network. (see Mayton

col. 8, lines 57-63: communications implemented utilizing multiple transport protocols

(TCP and RTP))

It would have been obvious to one of ordinary skill in the art to modify Beaven as

taught by Mayton to enable the capability for communications utilizing transport

networks. One of ordinary skill in the art would have been motivated to employ the

teachings of Mayton in order to enable the capability to analyze the actual performance

of the network and receive the benefit of network performance tools that reduce the

level of expertise about network topology required of IT personnel. (see Mayton col. 3,

lines 8-13)

Regarding Claim 23, Beaven discloses the network of claim 21. Beaven does not

specifically disclose a performance test scheduler. However, Mayton discloses

wherein further comprising a performance test scheduler. (see Mayton col. 11, lines 34-

40: test scheduler coordinates performance testing)

It would have been obvious to one of ordinary skill in the art to modify Beaven as

taught by Mayton to enable the capability for a performance test scheduler. One of

ordinary skill in the art would have been motivated to employ the teachings of Mayton in

order to enable the capability to analyze the actual performance of the network and

receive the benefit of network performance tools that reduce the level of expertise about

network topology required of IT personnel.   (see Mayton col. 3, lines 8-13)

Regarding Claim 25, Beaven discloses the network of claim 24, further comprising a

results collector for receiving a set of results associated with the performance test. (see

Beaven col. 3, lines 58-67: performance data collected)

Regarding Claim 26, Beaven discloses the network of claim 25.   Beaven does not

specifically disclose whereby transmits at least a subset of the set of results to the client

device. However, Mayton discloses wherein the results collector transmits at least a

subset of the set of results to the client device. (see Mayton col. 8, lines 32-35: endpoint

nodes (client: network devices) analyze performance data)

It would have been obvious to one of ordinary skill in the art to modify Beaven as

taught by Mayton to enable the capability for transmitting at least a subset of the set of

results to the client device.   One of ordinary skill in the art would have been motivated

to employ the teachings of Mayton in order to enable the capability to analyze the actual

performance of the network and receive the benefit of network performance tools that

reduce the level of expertise about network topology required of IT personnel.   (see

Mayton col. 3, lines 8-13)

Regarding Claim 28, Beaven discloses the network of claim 27. Beaven does not

specifically disclose whereby communicating a second scheduling instruction

associated with the performance test to the second device. However, Mayton discloses

wherein the performance test scheduler communicates a second scheduling instruction associated with the performance test to the second device. (see Mayton col. 3, lines 16-22: scheduling information transmitted to endpoint nodes (first and second network devices)

It would have been obvious to one of ordinary skill in the art to modify Beaven as taught by Mayton to enable the capability for communicating a second scheduling instruction associated with the performance test to the second device. One of ordinary skill in the art would have been motivated to employ the teachings of Mayton in order to enable the capability to analyze the actual performance of the network and receive the benefit of network performance tools that reduce the level of expertise about network topology required of IT personnel. (see Mayton col. 3, lines 8-13)

Regarding Claim 29, Beaven discloses the network of claim 28. Beaven does not specifically disclose whereby entering the test mode in response to receiving the second scheduling instruction. However, Mayton discloses wherein the second device includes a test mode; and wherein the second device enters the test mode in response to receiving the second scheduling instruction. (see Mayton col. 3, lines 16-22: second network devices used in generation of performance data)

It would have been obvious to one of ordinary skill in the art to modify Beaven as taught by Mayton to enable the capability for the scheduling request is received by a scheduling system. One of ordinary skill in the art would have been motivated to employ the teachings of Mayton in order to enable the capability to analyze the actual

performance of the network and receive the benefit of network performance tools that reduce the level of expertise about network topology required of IT personnel. (see Mayton col. 3, lines 8-13)

8.   Claims **10, 11, 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Beaven-Mayton** and further in view of **Silva** (US Patent No. **6,360,268**).

Regarding Claim 10, Beaven-Mayton discloses a performance test scheduler between a first and second network device. (see Mayton col. 3, line 66 - col. 4, line 9) Mayton does not disclose the capability to determined whether the scheduling request is authorized. However, Silva discloses the method of claim 6, further comprising determining whether the scheduling request is authorized. (see Silva col. 7, lines 10-14: determine if user has permission to perform test)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Beaven-Mayton to determine whether a scheduling request was authorized as taught by Silva. One of ordinary skill in the art would be motivated to employ Silva in order to maximize efficiency for test scheduling in the generation of network communication performance metrics. (see Silva col. 1, lines 44-48: " ... *maximize efficiency in the handling of test scheduling and test execution ... automate ... testing by using a server to manage test machines and to allocate test packages ... in accordance with a schedule ...* ")

Regarding Claim 11, Beaven-Mayton discloses a performance test scheduler between

a first and second network device. Mayton does not disclose the capability to

determined whether the scheduling request is not authorized. However, Silva discloses

the method of claim 10, further comprising indicating that the scheduling request is not

authorized. (see Silva col. 7, lines 10-14; col. 12, lines 38-47: determine if user has

permission to perform test)

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to modify Beaven-Mayton to indicate whether a scheduling request

was not authorized as taught by Silva. One of ordinary skill in the art would be

motivated to employ Silva in order to maximize efficiency for test scheduling in the

generation of network communication performance metrics. (see Silva col. 1, lines 44-

48)

Regarding Claim 14, Beaven-Mayton discloses a performance test scheduler between

a first and second network device. Mayton does not disclose the capability to indicate a

failed scheduling request. However, Silva discloses the method of claim 13, further

comprising indicating a failed scheduling request. (see Silva col. 7, lines 10-14; col. 12,

lines 38-47: determine if user has permission to perform test)

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to modify Beaven-Mayton to indicate a failed scheduling request as

taught by Silva. One of ordinary skill in the art would be motivated to employ Silva in

order to maximize efficiency for test scheduling in the generation of network

communication performance metrics. (see Silva col. 1, lines 44-48)

9.   Claims **12** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Beaven-Mayton** and further in view of **Zhuo** (US Patent No. 20030036865).

Regarding Claim 12, Beaven-Mayton discloses the method of claim 6.   Beaven-Mayton does not specifically disclose whereby determining whether the scheduling request conflicts with a second scheduling request.   However, Zhuo discloses further comprising determining whether the scheduling request conflicts with a second scheduling request. (see Zhuo paragraph [0063], lines 14-27: test parameters for scheduling request in conflict)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Beaven-Mayton to determine test scheduling conflicts as taught by Zhuo. One of ordinary skill in the art would be motivated to employ Zhuo in order to optimize the efficient coordination for test scheduling in the generation of network communications performance metrics. (see Zhuo paragraph [0007], lines 9-11: *" ... methods and systems for timely and efficient coordination and conduct of remote equipment tests would be desirable ... "*)

Conclusion

10.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kyung H. Shin whose telephone number is (571) 272-

3920. The examiner can normally be reached on 9:30 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

К Н Ѕ

Kyung H Shin
Patent Examiner
Art Unit 2143

KHS

November 10, 2007
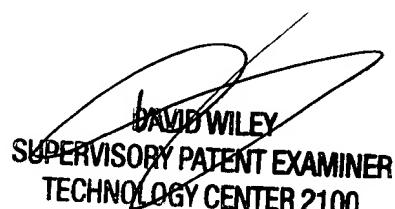
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